

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHARLES ALPINE,

Plaintiff,

VS.

WARDEN WATHEN, *et al*,

Defendants.

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CIVIL ACTION NO. 4:13-CV-3104

OPINION ON DISMISSAL

Plaintiff Charles Alpine, a state inmate confined in the Texas Department of Criminal Justice - Correctional Institutions Division's (TDCJ-CID) James Allred Unit, has filed a *pro se* civil rights suit alleging denial of due process. The Complaint names as defendants R. Wathen, Warden of the Allred Unit, and R. Stivers, head of the grievance board. Plaintiff seeks punitive damages based on the alleged failure to investigate and address his grievances. (Docket No. 1.) Plaintiff has also filed a motion to proceed *in forma pauperis*. (Docket No. 2.)

Under 28 U.S.C. § 1915(g), a prisoner cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. The only exception to this revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. Banos v. O'Guin, 144 F.3d 883, 884 (5th Cir. 1998).

Plaintiff's present suit is clearly subject to the three-strikes bar under Section 1915(g) because his complaint does not indicate that he is in any danger and his litigation history reveals that he has previously filed numerous frivolous cases in the federal courts. Prior to filing this action, Plaintiff had at least six suits dismissed as frivolous. Alpine v. Reno, 1:96-47

(D.D.C.)(dismissed as frivolous on Jan. 17, 1996); Alpine v. Reno, 1:95-966 (D.D.C.)(dismissed as frivolous on May 24, 1995); Alpine v. Reno, 1:94-2155 (D.D.C.)(dismissed as frivolous on Oct. 6, 1994); Alpine v. Reno, 1:94-2467 (D.D.C.)(dismissed as frivolous on Nov. 16, 1994); Alpine v. Casteel, 4:93-2007 (S.D. Tex.)(dismissed as frivolous on Aug. 18, 1993); and Alpine v. Legg, 4:93-1845 (S.D. Tex.)(dismissed as frivolous on Aug. 11, 1993). In addition, less than one year ago, Plaintiff filed a suit nearly identical to this one which was promptly dismissed under the three-strikes provision. Alpine v. Wathen, 4:12-CV-3610 (S.D. Tex.) (dismissed on Dec. 12, 2012).

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). Any pending motions are further DENIED.

The Clerk will provide a copy of this Order to all parties, to the TDCJ-Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker, Three-Strikes List Manager.

SIGNED at Houston, Texas, this 14th day of February, 2014.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE